

**Oak Ridge Associated Universities
Commercial Items Terms & Conditions**

PART 1. APPLICABLE TO ALL TRANSACTIONS

1.1 DEFINITIONS

The following terms shall have the meanings below:

- (a) Government means the United States of America and includes the U. S. Department of Energy (DOE) or any duty authorized representative thereof.
- (b) Company means Oak Ridge Associated Universities (ORAU) acting under Contract No. DE-AC05-00OR22750.
- (c) Seller means the person or organization that has entered into this Agreement.
- (d) Agreement means Purchase Order, Subcontract, Blanket Agreement, or modifications thereof.
- (e) Buyer/Contract Specialist means Company's cognizant Procurement representative.
- (f) Item means "commercial item" and "commercial component" as defined in FAR 52.202-1.

1.2 RESOLUTION OF DISPUTES

- (a) Seller and Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Oak Ridge, Tennessee. Cost shall be allocated by the mediator or arbitrator, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows: (1) Subject to (2) below, any litigation shall be brought and prosecuted exclusively in Federal District Court with venue in the United States Court for the Eastern District of Tennessee, Northern Division; (2) Provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in either Anderson, Knox or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate.
- (b) The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of Tennessee except for Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses which shall be determined in accordance with federal law.
- (c) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this subcontract pending final resolution of any dispute arising under this subcontract between the parties hereto or between Seller and its sub-tier subcontracts.

1.3 ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Articles of the Subcontract or provisions of the Purchase Order (including alterations and special provisions therein), (2) Special Terms and Conditions attached thereto, (3) General Terms and Conditions, (4) Statement of Work or description of services and/or supplies.

1.4 TITLE AND ADMINISTRATION

Any right and/or interest which is acquired under the terms of this Agreement shall pass directly from Seller to the Government. Company shall make payments under this Agreement from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. Administration of this Agreement may be transferred, in whole or in part, to DOE or its designee(s), and to the extent of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

1.5 ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement or delivering the items identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporated by reference or attachment. Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement that are different from or in addition to those mentioned in this document. Failure of Company to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement.

1.6 WARRANTY

Seller warrants that items delivered under this Agreement shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of this Agreement. The warranty shall begin upon acceptance and extend for a period of (1) the manufacturer's warranty period or six months, which ever is longer, if Seller is not

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the manufacturer and has not modified the item or (2) one year or the manufacturers warranty period, whichever is longer, if Seller is the manufacturer of the item or has modified it. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such items or services. Transportation of replacement items and return of non-conforming items and repeat performance of services shall be at Seller's expense. If repair or replacement of services is not timely, Company may elect to return the non-conforming items or repair or replace them or procure the services at Seller's expense.

1.7 ASSIGNMENT

Seller shall not assign rights or obligations to third parties without the prior written consent of Company. However, Seller may assign rights to be paid amounts due or to become due to a financing institution if Company is promptly furnished written notice and a signed copy of such assignment.

1.8 NEW MATERIALS

Unless otherwise specified in this Agreement, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. This does not exclude the use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

1.9 TRANSPORTATION

If transportation is specified "FOB Origin," (a) no insurance cost shall be allowed unless authorized in writing and (b) the bill of lading shall indicate that transportation is for DOE and the actual total transportation charges paid to the carrier(s) shall be reimbursed by the Government pursuant to contract No. DE-AC05-00OR22750. Confirmation will be made by the DOE Oak Ridge Operations Office, Procurement and Contracts Division, P.O. Box 2001, Oak Ridge, TN 37831-8756.

1.10 RISK OF LOSS

Where Company is liable to Seller for loss of conforming items occurring after the risk of loss has passed to Company, Company shall pay Seller the lesser of (1) the agreed price of such items, or (2) Seller's cost of replacing such items. Such loss shall entitle Seller to an equitable extension in delivery schedule obligations.

1.11 PAYMENT

Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, required, or (2) delivery of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments may be made either by check or electronic funds transfer, at the option of Company. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

1.12 COMPLIANCE WITH LAWS

- (a) Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent orders, DOE directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this Agreement. Seller warrants that each chemical substance constituting or contained in items furnished by this Agreement is on the list of substances published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act as amended. With each delivery Seller shall provide Company any applicable Material Safety Data Sheet as required by the Occupational Safety and Health Act and applicable regulations including, without exception 29 CFR 1910.1200.
- (b) Seller shall include this clause in all subcontracts, at any tier, involving the performance of this Agreement.

1.13 TERMINATION FOR DEFAULT

- (a) Company may terminate this Agreement for default, in whole or in part, if, after 10 days from Company's written notice, Seller fails to comply with any of the terms of this Agreement, or fails to provide adequate assurance of future performance. In that event, Company shall not be liable for any amount for items not accepted.
- (b) If this Agreement is terminated for default, Company may require Seller to deliver to Company any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Agreement. Company shall pay the agreed-upon price for completed items delivered and accepted. Company and Seller shall agree on the amount of payment for all other deliverables.
- (c) Seller shall not be liable to Company for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence. However, the delays of Seller's suppliers at any tier must be proved to be beyond the control of both Seller and its suppliers and without fault or negligence of either.
- (d) The rights and remedies of Company in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

1.14 BANKRUPTCY

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If Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Buyer/Contract Specialist within five days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing by Company Agreement numbers all company agreements for which final payment has not been made.

1.15 TAXES

By reason of Tax Exemption No. 100141955, Seller should not include in the price any state and local taxes incurred in the state of Tennessee except those which were paid by Seller to third parties in acquiring the items which are the subject matter of this Agreement. The price does include all applicable Federal taxes.

1.16 INCORPORATION BY REFERENCE

This Agreement incorporates certain provisions by reference. These articles and clauses apply as if they were incorporated in their entirety. For FAR and DEAR provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means Buyer/Contract Specialist. Company clauses incorporated by reference are available from Company's Procurement Internet Home Page at: <http://www.orau.gov/procurement/business.htm>. The FAR and DEAR may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C." or from the following Government web sites, FAR: <http://www.arnet.gov/far/> and DEAR: <http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Regulation?OpenDocument>

The following clauses are incorporated by reference:

FAR 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors, Debarred, Suspended, or Proposed for Debarment (JUL 1995) except for paragraph (b)
FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)
FAR 52.222-26 Equal Opportunity (APR 2002) (The required poster is available at: <http://www.dol.gov/esa/regs/compliance/posters/eeo.htm>)
FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
FAR 52.225-13 Restrictions on Certain Foreign Purchases (JULY 2000)
FAR 52.227-1 Authorization and Consent (JUL 1995)
ORO H55 Quality Assurance System Alternate I (AUG 1999) (Reference ORAU Policy GP-810 below)
ORAU Policy GP-810 Quality Assurance, including Attachments 1 & 2.
ORO H65 Confidentiality of Information (MAY 1997)
Counterfeit/Suspect Materials (Company 7-00)

The following clause is incorporated in full text:

SENSITIVE FOREIGN NATIONS CONTROLS

- (a) In connection with any activities in the performance of this Agreement, Seller agrees to comply with the "Sensitive Foreign Nations Controls" requirements furnished to Seller by Company, relating to those countries, which may from time to time, be identified to Seller by written notice as sensitive foreign nations. Seller shall have the right to terminate its performance under this Agreement upon at least 60 days prior written notice to Company if Seller determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance to continue performance of the work under this Agreement as a result of such notification. If Seller elects to terminate performance, the provision of this Agreement entitled. "Termination for Convenience," shall apply.
- (b) The provisions of this clause shall be included in applicable subcontracts.

PART 2. APPLICABLE WHEN ITEMS INCLUDE SERVICES

2.1 APPLICATION OF UNIFORM COMMERCIAL CODE

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For the purposes of items that include services, the Uniform Commercial Code Article 2, Parts 1, 3, 5, 6, and 7 as adopted by the State of Tennessee shall apply to this Agreement.

2.2 CHANGES

- (a) Company may at any time, by written notice, make changes within the general scope of this Agreement in any one or more of the following: (1) description of the services to be performed; (2) place of performance; and (3) the amount of services to be furnished. If any such change causes a difference in the cost of, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written modification to this Agreement signed by both parties. Any claim for adjustment by Seller must be made within 30 days from the date of receipt of Company's change notice, although Company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment.
- (c) Only the Buyer/Contract Specialist is authorized on behalf of Company to issue changes whether formal or informal. If Seller considers that any direction or instruction by Company personnel constitutes such a change, Seller shall not rely upon such instruction or direction without written confirmation from the Buyer/Contract Specialist. Nothing in this clause, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the agreement as changed.

PART 3. APPLICABLE WHEN SELLER PERSONNEL WORK ON DOE SITE

3.1 Incorporation by Reference

For information on clauses incorporated by reference, see Part 1.16

The following clauses are incorporated by reference:

FAR 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984)
DEAR 952.203-70 Whistleblower Protection for Contractor Employees (DEC 2000)
DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure Records (APR 1984)
DEAR 970.5223-1 Integration of Environment, Safety, and Health Into Work Planning and Execution (DEC 2000)
(Applies if specifically notified in this subcontract that work is complex or hazardous.)
DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites (DEC 2000)
ORO H10 Oversight of Contractor (MAY 1997) (Modified)
ORO H50 Safeguards and Security Awareness Program (MAY 1997) (Note: Updated Nov 1998)
Unclassified Foreign Visits and Assignments (DOE P 142.1 and DOE N 142.1)
Hazardous Materials Reporting (29 CFR 1910.1200)
ORAU Policy ESH-110 Environment, Safety and Health (ES&H), including Attachment 1
ORAU Policy HR-1010 Drug/Alcohol Free Workplace, Subcontractor Requirements
ORAU Facilities Management Section Procedure FMS-7, Safe Subcontractor Work
ORAU Visitor and Subcontractor Handbook
Insurance - Work on a Government Installation (Company 4-99)

**PART 4. APPLICABLE WHEN WORK INVOLVES ACCESS TO CLASSIFIED INFORMATION, SPECIAL
NUCLEAR MATERIAL OR AUTHORIZED UNRESTRICTED ACCESS TO AREAS CONTAINING SUCH
INFORMATION OR MATERIALS**

4.1 Incorporation by Reference

For information on clauses incorporated by reference, see Part 1.16

The following clauses are incorporated by reference:

FAR 52.227-10 Filing of Patent Applications-Classified Subject Matter (APR 1984)
DEAR 952.204-2 Security (May 2002)
DEAR 952.204-70 Classification/Declassification (SEP 1997))
DEAR 952.204-73 Facility Clearance (May 2002)
ORO H50 Safeguards and Security Awareness Program (MAY 1997) (Note: Updated NOV 1998)

PART 5. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$100,000

5.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.16

The following clauses are incorporated by reference:

FAR 52.219-8 Utilization of Small Business Concerns (OCT 2000)

5.2 TERMINATION FOR CONVENIENCE

Company reserves the right to terminate this Agreement, or any part hereof, for the convenience of itself or the Government. In the event of such termination, Seller shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work. Subject to the terms of this

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Agreement, Seller shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Company using its standard record keeping system, have resulted from the termination. Seller shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This clause does not give Company or the Government the right to audit Seller's records. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

PART 6. APPLICABLE ONLY TO CERTAIN TRANSACTIONS

6.1 NUCLEAR HAZARDS INDEMNITY

If performance involves risk of public liability for a nuclear incident or precautionary evacuation and Seller is not subject to Nuclear Regulatory Commission (NRC) financial protection requirements or NRC indemnification, this Agreement incorporates by reference DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (JUN 1996). For purposes of incorporation, "subcontractor" means Seller's subcontractor.

6.2 INCORPORATION BY REFERENCE

The following clause is incorporated by reference in all Agreements in Excess of \$500,000

FAR 52.219-9 Small Business Subcontracting Plan (OCT 2000) Alternate II (OCT 2000)